

BOUNDARY

BETWEEN

PANAMA AND COSTA RICA

ARGUMENT

UPON THE JURISDICTION AND POWER OF THE ARBITRATOR

SUBMITTED

TO THE

HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES
OF AMERICA

BY

BELISARIO PORRAS

PRESIDENT OF THE REPUBLIC OF PANAMA AND FORMERLY ENVOY EXTRAORDINARY
AND MINISTER PLENIPOTENTIARY IN CHARGE OF THE DEFENCE OF THE
TERRITORIAL RIGHTS OF PANAMA IN THE ARBITRAL BOUNDARY
LITIGATION WITH THE REPUBLIC OF COSTA RICA

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TO THE HONORABLE THE CHIEF JUSTICE OF THE SUPREME COURT OF
THE UNITED STATES :

Article VII of the Boundary Convention of March 17, 1910, provides that Your Honor's Award, whatever it be, shall be held as a perfect and compulsory treaty between the high contracting parties, both binding themselves to the faithful execution thereof and waiving all appeal against it ; but this, however, is not an authorization to disregard the terms of Article I of said Convention, whereby Your Honor is appointed Arbitrator, and which defines the question upon which your decision is to be made. It refers to the award which you may make *within those obligatory terms*, whatever it may be, or however it affects Costa Rica or Panama, as otherwise Article VII of the Convention would be in opposition to Article I as being contradictory of and incompatible with it. Otherwise, no explanation could be found for the work, the extreme care and diligence used in the negotiation of the Arbitral Convention under consideration, nor the purpose in view in defining, as they were defined, the differences between the two countries, that is the controversy or question between them, and, finally, in establishing, as it was established, without leaving room for doubt, at the end of the discussion, what is the point upon which the Arbitrator is to render his judgment.

Article I of the Arbitral Convention establishes that Your Honor is to draw the boundary line between Panama and Costa Rica under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic, of September 11th, 1900, and by this it appears plainly that said Award has been accepted by both parties, that it is binding and that the only thing involved is to interpret it correctly, and to ascertain its true intention. But this, which is thus made so plain,

can be shown even more clearly than by the Convention itself, where the discussions necessary to reach an agreement were crystallized, by the history preceding such agreement.

The Award of the President of the French Republic put an end to the old boundary question existing between Colombia, to which Panama has succeeded in this respect, and Costa Rica. Both contending nations had submitted this question to the Arbitral decision of the President referred to, by virtue of a Convention or Compromis concluded between the two nations, similar to the present one, in which the following formal declaration was made: that the decision which the Arbitrator chosen should render, was to be held as a perfect and compulsory treaty to the faithful execution of which their national honor was thenceforth pledged.

On September 11, 1900 the Arbitral Award was rendered at Rambouillet, the parties concerned being immediately notified of the fact. Colombia, to whose rights in this question Panama has succeeded, fully accepted it. For her the boundary line that would in future separate her from Costa Rica was that established by the Award. Colombia's claims had extended further north, as far as Cape Gracias á Dios, just as the claims of Costa Rica extended further south, down to the Escudo de Veraguas. But, Colombia accepted the boundary line awarded, and also that the frontier should have an invariable natural boundary, such as the summits of the hills and mountains. The Communication of the Minister of Colombia in Costa Rica, Mr. Lorenzo Marroquín, dated February 27, 1901, shows this acceptance. Panama, which became separated from Colombia not long after the Award was rendered, accepted this tradition. For her the Award was the law, and she could not consent to its disavowal. Moreover upon a certain occasion, when willing to make concessions to Costa Rica, Panama demanded that as a preliminary step Costa Rica should publicly and solemnly declare its acceptance of that Award. It had been agreed with Costa Rica, before the Arbitral Award was rendered, that it was to be held as a perfect and compulsory treaty, and it was held as such.

Costa Rica also accepted the Award. The communication of the Minister, Mr. M. M. de Peralta, who was Costa Rica's representative in Paris, addressed to the Minister of Foreign Affairs of France, Mons. Delcassé shows that the Arbitral Award was neither rejected nor impugned. As to the line itself, he interpreted it as he understood it, over a certain portion of the territory, as indicated in the first paragraph of the Arbitral Award. This establishes that the line runs along the division of waters between the Atlantic and the Pacific, to a point near the ninth degree (9°) of latitude, thence along the divide between the Chiriquí Viejo and the affluents of Golfo Dulce to Punta Burica, and up to this point the Minister of Costa Rica was in accordance with the Award. As regards the line which, according to the Award, runs from Punta Mona along the spur of the Cordillera which starts from that Punta, the Minister only followed the language of the Award as to the Punta, that is, the extreme limit, and with the spur extending thence up to a certain point where a line running West-Southwest, would extend to the mouth on the Tarire or Sixaola river, of the Yorquín or Zhorquín river, near meridian 82° 50' West of Greenwich, 85° 10' West of Paris and 9° 33' north latitude, thence crossing the thalweg of the Tarire or Sixaola on the bank of the Yorquín or Zhorquín, and thence south toward the Central Cordillera along the range which divides the basins of the Yorquín on the East and the Urén on the West.

Of course this was an arbitrary interpretation, and His Excellency the President of the French Republic did not accept it. The Arbitral Award plainly stated that "the frontier between the Republic of Colombia and the Republic of Costa Rica shall be formed by the spur of the Cordillera which starts from Cape Mona on the Atlantic Ocean, and closes on the north the Valley of the Tarire or Sixaola river, and thence by the chain of division of waters between the Atlantic and the Pacific." There is no confusion in such statement. The Arbitral Award does not lay courses, nor state meridians or degrees nor direct the crossing of any river. It contains a general indication, natural and unmistakable. A

boundary judge could do no more. The line which he traced is unchangeable : a spur which starts from a certain point and ends at the Main Cordillera. If he had indicated a part of the spur and thence had designated rivers and plains he would have had to go into details concerning the point of the spur where the line leaves it, the name of the river to which it runs, the bank of that river at which it stops ; whether it crosses any thalweg or continues along the course of its waters and how far ; whether it extends to its source or to another river, and so on. There was no occasion for designating meridians. Where did Mr. Peralta find them ? They are not mentioned in the Award, and this alone shows that his indication of such meridians is entirely personal and arbitrary. Minister Delcassé politely and diplomatically refused his consent to the biassed interpretation made by that Minister. The frontier of the Award is the legal frontier. The physical or material frontier, with its details, and precise determination must be the result of other proceedings. All boundary suits, even in the case of private estates, always consist of two parts, one on the subject of boundaries proper, in which rights are discussed, which ends with the recognition of such rights, and following a general line of visible indications, more or less lacking in definiteness, and the second part, or the surveying or placing of boundary posts, for the marking out by surveyors or engineers of the points of the boundary line by means of permanent objects or marks, leaving no room for future doubts or discrepancies.

In his acceptance of the Award the representative of Costa Rica went so far as to suppose that there would be no doubt that the line of the Arbitral Award would be physically fixed within the limits of the disputed territory, as shown by the text of Articles II. and III. of the Paris Convention of January 20, 1886.

Said Articles provide :

“ ARTICLE II. The territorial boundary that the Republic of Costa Rica claims, on the side of the Atlantic extends as far as _____

"The territorial boundary that the United States of Colombia claims extends, *on the side of the Atlantic, to Cape Gracias á Dios, inclusive.*.....

 "ARTICLE III. The Arbitral Award shall be limited to the disputed territory, *which lies within the extreme boundaries already described.*.....

Minister Delcassé replied upon this point wholly in conformity with the representations made by the Minister of Costa Rica. The frontier line indicated in the Award of the President of the French Republic did not go beyond the extreme boundaries mentioned in Article II. of the Paris Convention of January 20, 1886, nor could it have been placed outside said extreme limits, at the time of its physical determination. Cape Gracias á Dios, in fact, is far to the north of the spur of the Cordillera which starts from Cape Mona, and far to the north of the Cordillera with which the spur is connected.

Why imagine or suppose for a moment, that the line of the Arbitral Award might be, physically, not drawn within the limits of the disputed territory? Such an uncertainty must have arisen in the mind of the representative of Costa Rica either through a suggestion or error. Without doubt, when the Award was rendered the Representative of Costa Rica, in interpreting it, did not remember the Paris convention which defined the extreme limit of the Colombian claims, and had only in mind the Brief which, in his capacity as Counsel for Colombia, was submitted by Mr. Francisco Silvela. I have quoted above Articles II and III of the Convention and hereunder I will transcribe the description of the boundary proposed in the Brief of Counsel, which is as follows :

"Starting at the mouth of the River Golfito, on Golfo Dulce, on the Pacific side, the line follows a northerly course on a meridian traversing the River Coto, which empties into the Pacific, and crossing the Lari and Coén rivers, tributaries of the Tiliri or Sigsaula river, whose waters empty into the Atlantic, meets said Tiliri or Sigsaula river at a point

about 9° 33' north latitude. From the point of interception of said meridian with the Tiliri or Sigsaula River, a point the geographical co-ordinates of which are about 9° 33' north latitude and about 85° 31' 30" longitude west of the Paris meridian, a straight line is drawn which ends at the mouth of the Sarapiqui river on the River San Juan or Desaguadero (10° 43' north latitude and 86° 15' longitude West of the Paris Meridian)."

A cursory glance suffices to show that the text of the Brief is not the same as that of Articles II and III of the Convention of 1886, concluded between the two interested countries, but though not the same they are not contradictory. The Convention only pointed out the extreme points without stating by what line they could be connected. The boundaries of the territory claimed by Colombia extended, on the side of the Atlantic as far as Cape Gracias á Dios, and those claimed by Costa Rica as far as Escudo de Veraguas. The Convention was and must have been the law. The counsel for one of the parties may have drawn an imaginary line in his Brief, and have stated that from such and such a point the line runs to such another point and turns in such a direction and runs by such and such a route to the extreme point, without binding to this course the party for whom he was speaking and without obligation to the other party. The statement may have been more or less based on truth, but it did not go beyond a lawyer's device. What really bound the parties, and above all, the Arbitrator, was the Convention, which in Article III, says: "The Arbitral Award shall be limited to the disputed territory *within the extreme limits already described.*" These extreme limits already described were no other than those of Article II which, with regard to Colombia, simply states that "they extend on the Atlantic side as far as Cape Gracias á Dios, inclusive"; so that the Arbitral Award of the President of France, without going beyond said Cape, instead of confining itself to saying that the line followed the spur of the Cordillera, and then the Cordillera enclosing the valley of the Tarire or Sixaola river, had fixed another line

farther north and farther west than this one, it would not have gone beyond the extreme limits described in the Convention, because, even in such case, Cape Gracias á Diós, the only extreme limit would still be far to the north.

The description of a boundary line by the Counsel, Silvela, was entirely arbitrary, as was arbitrary the interpretation of the Loubet Award made by the Representative of Costa Rica in Paris, because, while the Colombian domain extended as far as Cabo Gracias á Diós, according to numberless colonial documents, in none of these documents the boundary was drawn with precision. For instance, when the Province of Veragua was created, the King and Queen of Spain simply stated that the Province extended to Cape Gracias á Diós. When the " Audiencia " and Royal Chancery of Panama in Terra Firma was created, it was stated, in like manner, that its district embraced the Province of Castilla de Oro as far as Portobelo and its lands, the town of Natá and its lands, the Government of Veraguas, etc. In none of these creations, unbounded, in a way, were the precise boundaries established, and this was also the case when on August 20, 1739, the Viceroyalty of Santa Fé or New Kingdom of Granada was created. It was merely stated that the King had decided to add to the new Viceroyalty the provinces of Panama, Portobello, Veragua and Darien. It was said simply as above stated, without defining what were the boundaries of each of these provinces. Nor could these boundaries be fixed, because they were unknown. If in our day, with all the facilities at hand for making explorations and for travel, with the improvements attained in the instruments necessary to locate all places, with the increase of population and the development of wealth, we do not know well the extent and size of our own territorial possessions in America, how could the Kings of Spain, or even their agents, the conquerors and settlers in the newly discovered land know them? It was impossible. At most they were acquainted with the coast, and when establishing as a boundary a certain point, a cape, or the mouth of a river on the coast, then they were sure of their marks. In the interior the territory was only known in part, but the geo-

graphical co-ordinates could not be determined. The discoverer crossed a certain territory, but could not give at once an accurate description covering its whole extent. Speaking a tongue different from that of the aborigines, the discoverer very frequently mistook names. The wild tribes inhabiting the land did not speak the same tongue among themselves, so that for instance, if a tribe occupying the upper portion of a river spoke a language different from that of the tribe occupying the lower portion, the river was known by several names which the conqueror often took to represent different streams. There are many instances of this all over the American continents. In the territory under discussion the Tarire or Sixaola river is a striking example of the foregoing assertion. Under these circumstances, think for a moment what the maps of those times would be! It is, therefore, a mistake, a serious mistake, to undertake to apply to-day to modern maps the lines of the conquerors or discoverers of America. Old ideas cannot be measured by the standards of to-day. Aside from these considerations, there existed no maps at the time, or what there were, were full of mistakes, and subject, in consequence, to countless corrections. The Province of Veragua had no precise and unmistakable boundaries. It extended as far as Cape Gracias à Dios, and this extreme limit was the only boundary really known. When Colombia and Costa Rica decided to submit to arbitration their differences, they did not pretend to draw out definitely the extent of their respective claims. Is Mr. Silvela's statement of any decisive value? And shall the value of such statement, which does not bind even Colombia, be of greater weight before the Arbitrator than the value of the Arbitral Convention, which set down the limitations within which the Arbitral Award must be made?

The Silvela line arbitrarily cuts through the Sixaola river, while that of the Award embraces the entire river and the whole valley without any cuts. Can it be imagined, that, because it embraces the entire valley without cutting it, as the Silvela line did, the line defined by the Award ex-

ceeds the extreme limits? An answer to this will be found in the Arbitral Convention which was the law for the parties concerned and especially so for the Arbitrator. The line of the Arbitral Award, therefore, not even by a stretch of imagination exceeds or goes beyond the boundaries of the disputed territory, but on the contrary is within said limits, wholly comprised within them.

I believe that the Representative of Costa Rica was thinking of none of these things. He forgot the force of the Convention and that it draws no lines, but states only the limits or extreme points of the respective claims. The Silvela line crosses arbitrarily the Sixaola River, and that of the Award includes the whole river and the whole valley without crossing them. Can it be conceived that, because it includes the whole valley and does not cross it, as does the Silvela line, that of the Award goes beyond the extreme limits? The answer to this question is in the Arbitral Convention, which was the law for the parties and especially for the Arbitrator.

Besides, the Representative of Costa Rica did not undertake to accept the Award of his own authority. Both in the matter of the recognition of the true intent of the Award, to leave a natural frontier to both republics, as well as in the interpretation which he gave to a portion of the line, he acted on behalf and under instructions of his Government. The President of Costa Rica, Mr. Rafael Iglesias, in fact, reported to the Congress of his country in his message of May 1, 1901, that is, eight months after the Award had been rendered, that as soon as he was notified of the Arbitral decision he instructed his Minister in Europe to communicate to the High Arbitrator the manner in which Costa Rica understood the first paragraph of the Award. There is not one single word in the message to show that it was impugned. There is not one single act of that Congress repudiating the Arbitral Award. On the contrary, the reading of that portion of the message dealing with the case shows the acceptance of the Arbitral Award. President Iglesias says: "It is only to be regretted that the Arbitral Award was not accompanied by a map of the dis-

puted territory which, while serving as an explanation and supplement, would have saved at the time of *the physical demarcation* possible difficulties growing out of the circumstance that the topography of that territory and the general terms of the Award lend themselves to different locations of the dividing line." The Award was, then, law for Costa Rica, too, and was accepted by her. Its generality was natural, as is the generality of every law. The Award establishing the boundaries between the same Republic of Costa Rica and that of Nicaragua was also general, and such has been the case with all boundary awards rendered up to the present time. It is to be regretted that the determination of frontiers is always general and not precise, and this is why the first determination of the boundaries of a country is always followed by its physical demarcation, through commissions of engineers who settle the particular cases.

The acceptance or assent of the Republic of Costa Rica to the Award defining its boundaries with Panama, has not only been given by President Iglesias, just mentioned, but also by his Minister of Foreign Relations, Mr. Ricardo Pacheco. When invited by the Minister of Colombia, Mr. Lorenzo Marroquin to attend the physical act of setting up the monuments, he was willing to do so. Based on the mistaken idea that the Arbitral Award of President Loubet exceeded the extreme limits of the Colombian claim; he only asked that Colombia and Costa Rica should come in advance to an understanding regarding that point, which, otherwise, he considered as settled by Minister Delcassé. How could the line extend beyond the extreme claim of Colombia, when the extreme point was hundreds of leagues beyond the frontier indicated? It did not go beyond, but this had been maintained as a last subterfuge. Even in case it were so, the declaration of M. Delcassé had corrected any defect. Minister Pacheco has stated that the opinion of Costa Rica tended to preserve intact the virtue of the Award, and, on the other hand was supported in this by the opinion of the Arbitrator. It was not only the opinion of the Arbitrator, but also that of Colombia in the first place and

that of Panamá afterwards. Costa Rica wanted it so ; Panamá has wanted it no less nor wanted anything else ; so that, if any defect existed, since Minister Delcassé declared that undoubtedly the physical line should be drawn within the extreme territorial limits claimed, such defect had been expurgated forever.

In a preceding paragraph I have stated that once, when Panamá was willing to grant concessions to Costa Rica, notwithstanding her desire to do so to a neighboring and friendly country in the course of direct negotiations, she requested, nevertheless, first and above all the acceptance of the Award of the President of the Republic of France, under date of September 11, 1900. This took place when Costa Rica sent to Panama a Minister for the purpose of negotiating a treaty. The Minister signed at the time a document declaring most solemnly that the Loubet Arbitral Award had ended forever the boundary dispute between the two countries. The Award was accepted once more by Costa Rica ; it was the law that could not be evaded, a perfect and binding treaty for compliance with which both countries had pledged their national honor.

But this is not all. Sometime later, another President of Costa Rica, Mr. Cleto Gonzalez Víquez also recognized the force of the Award, and its irrevocable and final character in a message which, like the one of President Iglesias, was addressed to the representatives of the Costa Rican people in Congress assembled. This was on May 1, 1909, almost on the eve of the negotiation of the Arbitral Convention, the spirit of which I am analyzing. President Gonzalez-Víquez says in his message, that "the boundary question with Panama is about to be settled. * * *" " * * * The Pacheco-Guardia Treaty having lapsed, he was proceeding—if there did not exist between both countries an agreement defining their boundary line—to determine *which of the two interpretations of the Loubet Arbitral Award is the one in conformity with the spirit of the decision*, and to this end to have recourse to a new arbitration."

In his message there is not one single expression impugning the Loubet Arbitral Award. The message refers to interpretation only, not to rejection of the Award. Laws and treaties are

interpreted without destroying their validity ; contracts are interpreted in the same way ; decisions are likewise subject to interpretation. Under any pretext, or for any reason whatever, one of the parties gives to a decision an interpretation which the other party does not find to be in accordance with truth, and the decision is open to interpretation. This is the case in which Costa Rica has placed Panama, and Panama has accepted out of deference to Costa Rica, notwithstanding the fact that Panama has found nothing doubtful or vague in the Award.

At that time the Government of Costa Rica had requested the mediation of the American Government. President Gonzalez-Viquez message alluded undoubtedly to such mediation when stating that he was already proceeding to determine which of the two different interpretations of the Loubet Arbitral Award was more in conformity with the spirit of the decision. In fact, steps tending toward the mediation had already been taken in Washington through a Minister of Costa Rica on Special Mission, and through the American Minister in Panama. Panama declined to submit the boundary question to a new decision. She appointed a Minister to San José de Costa Rica for the purpose of dealing with the question through direct negotiation, and had already determined that in case of failure of such direct negotiations she would submit to the enlightened consideration and decision of the Honorable the Chief Justice of the United States *any point or points* which might be a cause of disagreement in fixing the boundary line, *in accordance with the Loubet Arbitral Award*. So says the note of the Secretary of Foreign Relations of Panama to the American Minister, Mr. Herbert G. Squiers. Under no consideration would Panama consent to enter into a new litigation to obtain an award different from the one rendered by the President of the French Republic, she would only allow a collateral decision affecting *any point or points* that might be a cause of disagreement upon fixing the physical boundary of the Arbitral Award, always maintaining the Award as the Supreme law.

The direct negotiations were not successful, and once the Amer-

ican mediation accepted Panama sent to the Department of State of the United States a Memorandum concerning its rights. This Memorandum was based on the principle of the acceptance of the Loubet Arbitral Award, in conformity with the tradition of Panama, consistent with the supreme respect due to arbitral decisions. The Memorandum was presented by the Minister of Panama accredited to Washington to the Secretary of State of the United States, who, in acknowledging receipt by his note of October 20, 1909, and after expressing his satisfaction at the cordial attitude of Panama in accepting the good offices of the American Government for the settlement of the boundary dispute with Costa Rica, referred to what constituted the difference or pending question between the two countries. The Chief Justice—he said—will render a final decision of “the question *as to which of the two boundary lines between Panama and Costa Rica is the correct one.*”

As this expression was very vague, the Minister of Panama at Washington requested of the Honorable the Secretary of State, on October 23, to be enlightened on this point. Costa Rica had her line, and Panama, in general terms, had that of the Loubet Arbitral Award; but it was important to ascertain if the lines which the Department of State so vaguely mentioned were these two lines or those in dispute between Costa Rica and Panama. The Honorable the Secretary of State, Mr. Philander C. Knox, replied on November 2, 1909, establishing what the American Government considered necessary, viz: that the arbitrator should determine *which of the two interpretations of the Loubet Award, the Panama line or the line of Costa Rica was the correct one*, in conformity with said Award.

The documents to which I have referred on this point, show that, until November 2, 1909, all the Governments interested in the controversy—Panama and Costa Rica the contending parties and the United States as mediator—understood that the difference between the two countries rested only on the failure to come to an understanding as to one portion of the line of the Award, but not as to the Award itself which had already been ac-

cepted. The mediation sought for by Costa Rica and accepted by Panama was for the purpose of having the two small countries come to an agreement as to that portion of the line which had not been accepted. Costa Rica had interpreted the Award, as far to the line in controversy by drawing it along the same spur of the Cordillera starting at Cape Mona, as the Award draws it, but not following along the entire spur but up to a certain point, from which a line running West-Southwest crosses the thalweg of the Tarire or Sixaola river on the left bank of its affluent the Yorquin or Zhorquin river. If by interpretation of the Loubet Arbitral Award is meant the mere acceptance of the line of the Award, explaining that such line must be the most natural, simple and easy to understand; that it constitutes a natural line and that undoubtedly it does not go beyond the maximum line of the Colombian claims, then Panama also has had her interpretation and the question is reduced to a mere drawing of the boundary line between the two republics, following for the purpose the most correct interpretation of the accepted Award.

In view, then, of the understanding reached between the contending parties and with the mediating government as to what constituted their differences, Panama vested its Minister in Washington on Special Mission, in charge of the settlement of the differences under discussion, with ample powers to carry on the negotiations, limited however as to the necessity of the solemn acceptance, first and above all, in the treaty or Arbitral Convention of the Award of the President of the French Republic, of September 11, 1900. These powers signed by the late President of Panama, Mr. José Domingo de Obaldia, contain that provision *sine qua non*, reaffirmed on the following day by the note of the Secretary of Foreign Relations of Panama to the Minister of that Republic on Special Mission, renewing the assurance of the amplest liberty for the negotiation of the Arbitral Convention, with the only restriction that first and above all the Loubet Arbitral Award should be fully accepted.

When the negotiations were opened with the mediation of the

American Government, the Representative of Costa Rica introduced for the first time in the discussion the point of nullity of the decision which by so many repeated acts of his Government had been accepted by his country, and at that Representative's request, the Secretary of State of the United States amicably suggested to the Government of Panama to give its Special Minister ampler powers so that, without the limitation relative to the acceptance of the Loubet Award, the whole question could be discussed, the final point to be submitted to arbitration being that of the respective claims of the two Republics as to the true boundary line.

The Representative of the United States in his note of February 3, 1910, informed the Government of Panama of the cablegram of the Department of State of the United States, dated on the preceding day, requesting that the powers of the Special Minister be enlarged. The Secretary of State also informed the Special Minister, February 2, 1910, that the cable referred to had been sent.

The Government of Panama gave mature consideration to the case, having weighty and numerous reasons for giving its assent to the least suggestion of the mediating Government; but it was not possible to do so. Besides the respect which the Panama Government has for the principle of arbitration, and notwithstanding its special interest as a small and weak country in adhering to that principle as a safeguard in its weakness, and notwithstanding the force of the tradition invariably observed in the boundary question with Costa Rica, it was impossible for her to repudiate the Award, and she was bound to defend to the last its integrity as a constitutional principle. In fact, at the time of the inception of the Republic, the Loubet Arbitral Award had already been rendered and it was incorporated in the Panama Constitution, thus becoming a part thereof. One of the Articles of the Constitution in describing the territory of the Republic, embraces therein the territory adjudicated by the Award. So that the reply of Panama to the Chargé d'Affaires of the United States was a complete refusal. The Government of Panama affirmed at the time in its reply of February 6, to the American Legation, that both the

spirit and the letter of the Constitution permit the Executive of Panama to solve the existing boundary differences with Costa Rica, always upon the basis of an interpretation of the Award, but that in no case is he empowered to make a public treaty by which said Arbitral Award might be discussed as to its validity.

On February 7, 1910, the Minister of Panama on Special Mission confirmed more fully the above declarations. In his note of that date he informed the Honorable the Secretary of State of the United States that the Panama Government would not issue powers authorizing the signing of any agreement tending to invalidate the Loubet Award, because the Constitution of the Republic, of which the said Award was a part, prohibited such act, and because the Award had not only been accepted by the Republic of Colombia, by the Republic of Panama and by Costa Rica, but by the United States as well.

There was, besides, a circumstance still more serious for Panama which her representative stated with the utmost loyalty. President Loubet had made his Award after many years of delay in agreeing to arbitration, and many more years of work to obtain it. Colombia could very well have supported her contention with ultimate success because she possesses the annals of the oldest colonial history, dating centuries back. She had been one of the best colonies of Spain, and her archives contain data and documents relating to the entire period of Spanish domination. But as Panama had become separated from Colombia, forming an independent republic, which Colombia has not recognized yet, it was impossible for Panama to make use of the evidence that Colombia submitted during four or five years of discussion.

At this point in the negotiations, the Secretary of State of the United States, who as friendly mediator had given the most studious attention to the respective attitudes of the Governments of Panama and Costa Rica, and well aware of the desire of Costa Rica that the proposed arbitration be as broad as possible, and equally sensible of the considerations

which impelled the Government of Panama to insist upon the Loubet Award as a basis for the definitive determination of the boundary line, on March 1, 1910, submitted an identical memorandum addressed to the Representatives of Panama and Costa Rica respectively, suggesting a method for the acceptance of the Loubet Award, so that the Chief Justice as Arbitrator could draw the frontier between the two countries.

The formula suggested took the form of the following question :

“ What is the boundary between the Republic of Panama and Costa Rica under and most in accordance with the true interpretation and correct intention of the Loubet Award *in the light of all the historical, geographical, topographical and other facts and circumstances surrounding it as well as under the established principles of international law ?* ”

The Memorandum was gladly received by the Republic of Panama, but the formula suggested as the main basis for the arbitration was persistently and vigorously discussed. Comparing this formula with that finally adopted and embodied in the Arbitral Convention concluded on March 17, 1910, it can be seen that it was finally divested of all adjectives, modifications and complements which might have given rise to the belief that the Loubet Arbitral Award could be either altered or disavowed. To interpret the Award in the light of all the historical facts amounted to a revision and new consideration of the question, the whole question already examined by President Loubet which had been constantly rejected by Panama. On the other hand, what could be those historic facts, except the acts issued by the Kings of Spain at different periods during their colonial control of America, as regards Costa Rica and Panama, such as royal “ cédulas ” or Royal orders, capitulations, chronicles, laws, decrees and letters ? Again, to interpret the Award under the established principles of international law, was equivalent to subjecting the Award to be either revalidated or else invalidated in accordance with said principles. Panama had contended in order to avoid a new litigation, to

prevent the bringing back to its beginning of the entire question, the new discussion of an acquired right, at last recognized and accepted after many years of struggle. The Representative of Panama, therefore, insisted on maintaining that the question to be submitted to the Arbitrator, as suggested in the memorandum of the Secretary of State, should be divested of any and all considerations, and this was obtained. The question submitted to the decision of the Honorable the Chief Justice of the United States, as Arbitrator, was embodied in the Arbitral Convention, devoid of all adjectives, complements or modifications. It was simply established that the Republics of Panama and Costa Rica agree to submit their differences to the decision of the Honorable the Chief Justice of the United States of America, who in the capacity of Arbitrator will determine "What is the boundary between Panama and Costa Rica under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic made the 11th of September, 1900?"

There is nothing relative to historical antecedents nor to the established principles of international law in the light of which the Loubet Award is to be interpreted. All this was eliminated, because it was seen that to leave it standing might give rise to the belief that the real intention of the parties to the Convention was to invalidate the Loubet Award. Of course, the Arbitrator could not render a decision without having a certain knowledge of the case, without taking into consideration facts which may influence his judgment, such as, for instance, the result of a survey of the territory, in view of a map of said territory and the claims of both parties. This is why it was added that the Arbitrator, in order to render his decision, shall take into account :

1st. The facts, circumstances and considerations which may have a bearing upon the case ; and

2d. The limitation of the Loubet Award expressed in the letter of His Excellency M. Delcassé, Minister of Foreign Relations of France, to His Excellency Señor Peralta, Min-

ister of Costa Rica at Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute, as determined by the text of Articles II. and III. of the Convention of Paris, of January 20, 1886.

The first part of this addition has a very general signification. The words *facts, circumstances and considerations* do not have a specific meaning. *Facts* is a word of many synonyms; it means, first of all an effect produced or a result achieved, an act, a deed, an event, and even a *circumstance*. It also means, reality, actuality, and truth. It is the assertion or statement of a thing done or existing, or which is falsely supposed to have occurred or to exist; it is in short a *datum*. *Circumstance* also has many synonyms. As its own composition indicates, it is that which stands around, which relates or is concomitant to an act or thing, an accident of time, place or manner which is connected with the substance of a fact or an assertion or statement. It is likewise a *fact* and as such it also means an event, an occurrence, an incident, a detail, a *datum*, and that is why, in the case of assertions or opinions, it is said *under the circumstances*, that is, *taking into account or consideration all things*. The word *consideration* represents an act of the mind rather than an outside event. It means that which is or must be taken into account as the basis for an opinion or action, and further signifies reason and motive.

So that the phrase quoted from the Arbitral Convention, viz.: "to decide this (that is the correct interpretation and true intention of the Loubet Award) the Arbitrator will take into account all the *facts, circumstances and considerations* which may have a bearing upon the case" (in the determination of the correct interpretation and true intention of the Loubet Award), the above phrase, I say, expresses nothing new to a judge nor anything which may justify our trouble in making a minute investigation of the question. Your Honor, as an Arbitrator, could never render a decision without having taken into account the assertions or statements of the representatives of Panama and Costa Rica (which are facts), nor the data furnished by them (also facts) nor the incidents

submitted (also facts), nor the accidents of time, manner and place connected with the evidence, nor the incidents and details which as *circumstances* are also facts, or amount to facts. In short, Your Honor, in your capacity as Arbitrator, would not in any case decide the question submitted to your good judgment—as to the correct interpretation and the true intention of the Loubet Award—except after examination, mature deliberation and careful thought, and in so acting Your Honor would have done nothing new, because it is Your Honor's customary manner and rule of procedure.

It is evident that for the settlement of any question, a certain foundation or basis is required, and the stronger the foundation the more justifiable the decision. Judges possess the cardinal element of justice, their judgment, which is neither the entire nor the only element of justice. But to form that judgment they need to examine all considerations, evidence, claims, averments and demands of the contending parties, so as to be able to give each what belongs to it, with perfect equity.

The foregoing explains the superfluous or trite addition of the words, *facts, circumstances and considerations*, that the arbitrator must take into account in drawing the frontier line between Panama and Costa Rica, under and most in accordance with the correct interpretation and true intention of the Award of the President of France.

As regards the *limitation of the Loubet Award*, expressed in the letter of Minister Delcassé, which Your Honor as Arbitrator is to take into account in rendering the decision, this is a concrete point of a special and real signification.

We know, in fact, that M. Delcassé in his answer to the Minister of Costa Rica gave the assurance that the physical line of the Award would be drawn, without doubt, within the limits of the disputed territory. This reply is, in a way, a sort of explanation or confirmation of the Loubet Award. But Costa Rica has called this a *limitation*, because she has been under the mistaken impression that the line of the Award extends beyond the extreme limits of the

territory in dispute. Be it as it may, the Loubet Award was made more explicit because of that declaration, and Costa Rica, being constrained to accept that, in your capacity as Arbitrator, Your Honor should draw the boundary line between that country and Panama in accordance with the Loubet Award, still demanded that in the Arbitral Convention there should be embodied what she was wont to call the *limitation* of the Loubet Award. Panama acceded to this and the Award has become a stronger law than ever, as it does not reject or disavow what is to be limited and it has been agreed that it should be limited. If the boundary line is to be drawn in accordance with the Loubet Award, but not outside or beyond the extreme confines of the disputed territory, it is clear to me that this must be so because the legal line of the Loubet Award is adopted in general terms, and the Award itself adopted in its entirety.

The foregoing is the history of the negotiation of the Arbitral Convention by virtue of which Your Honor is to decide as Arbitrator, the differences existing between Panama and Costa Rica. So far as the analysis of the Arbitral Convention is concerned, it is an easy matter and I beg leave to proceed.

Article I. of the Convention embodies the question that Your Honor is called upon to decide, as follows :

ARTICLE I. " The Republic of Panama and the Republic of Costa Rica, although they consider that the boundary between their respective territories designated by the Arbitral Award of His Excellency, the President of the French Republic, the 11th of September, 1900, is clear and indisputable in the region of the Pacific, from Punta Burica to a point beyond Cerro Pando on the Central Cordillera, near the ninth degree of north latitude, have not been able to reach an agreement in respect to the interpretation which ought to be given to the Arbitral Award as to the rest of the boundary line ; and for the purpose of settling their said disagreements agree to submit to the decision of the Honorable, the Chief Justice of the United States, who will determine in the capacity of Arbitrator, the question : what is

the boundary between Panama and Costa Rica, under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic made the 11th of September, 1900 ?”

The only question which has been submitted to Your Honor is, therefore, that concerning the boundary line between the two countries. *There is no dispute as to the true legal boundary*, which was established by the Arbitral Award of the President of France. *There is no dispute, either, as to the true physical line* “in the region of the Pacific from Punta Burica to a point beyond Cerro Pando, on the Central Cordillera near the ninth degree (9°) of north latitude,” as Article I. of the Convention above quoted provides that “the boundary between their respective territories designated by the Arbitral Award of His Excellency the President of the French Republic, the 11th of September, 1900, is clear and indisputable in that region.” *The only dispute is that in respect of the true physical line* for the rest of the legal boundary, as fixed by the Arbitral Award of the President of France, since Article I above quoted establishes the fact that the contending parties “have not been able to reach an agreement in respect to the interpretation which ought to be given to the Arbitral Award as to the rest of the boundary line.

In order to finally settle their controversy, both parties have agreed to submit to arbitration the question of the correct interpretation and true intention of the Loubet Arbitral Award. This Award, which was made as the result of a former treaty of arbitration between the contending parties, became the Supreme law of the territory for Panama and Costa Rica. The question submitted to your Honor is, consequently, before everything, a mere question of interpretation of a law common to both parties. Your Honor’s first duty in this controversy may be compared with that which you have in your capacity of Chief Justice of the United States when you interpret a law passed by the Congress of this Country.

If there should be a controversy, for instance, between a carrier and a shipper, as to the intention of Congress in passing a law,

the parties would appeal to the Court in order to ascertain the correct interpretation and the true intention of the law, as passed by Congress. Courts have been created for that purpose, and their powers and the limits of their jurisdiction have been clearly defined by law. On the other hand, when there is a question between two nations concerning the correct interpretation and true intention of an arbitral award, there is no Court having jurisdiction to determine such a controversy. Such a Court must, consequently, be created by mutual agreement between the parties to attain that end. But there are no laws defining or limiting the jurisdiction and the powers of such a Court, and they must therefore, be defined and limited by agreement of the contending nations, in the same manner. Thus, then, when such a Court has been created, it becomes necessary to examine the convention which created it, in order to ascertain the extent of the jurisdiction and of the powers which have been conferred upon it.

By an examination of the convention between Panama and Costa Rica it is seen that Your Honor's jurisdiction as Sole Arbitrator is limited to deciding the question above quoted and concisely stated in Article I. This question may be separated into two parts as follows :

I. What is the boundary between Panama and Costa Rica under the Award of the President of the French Republic of September 11, 1900 ?

II. What is the boundary between Panama and Costa Rica under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic of September 11, 1900 ?

The examination of either of these questions will clearly show that Your Honor's decision is to be based solely on the Award of the President of the French Republic, and that, in order to determine the boundary line under the conditions stated, Your Honor is to do two things, viz. :

I. Examine the Award of President Loubet above mentioned, for the purpose of interpreting correctly and discovering its true

intention, thus arriving at a conclusion as to how the boundary line between the two countries was conceived in the mind of the French Arbitrator.

II. To establish, as the result of such conclusions, what is the boundary line between the two countries.

In other words Your Honor is to ascertain exactly what was meant by the French Arbitrator, which can only be done by reference to the decision of said Arbitrator; and then, in Your Honor's capacity as an Arbitrator, also in accord with the terms of the Arbitral Convention under consideration, to designate as the boundary line between the two countries that which you think to be the one which M. Loubet traced in his mind by the terms of his Arbitral Award.

An Arbitral Tribunal is a Court of special and limited powers. While it has the right to decide on the scope of its own jurisdiction (Award of the Hague Tribunal in the matter of the Pious Funds) its powers are necessarily limited by the terms of the convention which creates it.

Under Sections VI and VII of the Protocol between the United States and Mexico in the question of the Pious Funds, the allegations were limited to a Memorial on the part of the United States and Counter-Memorial on the part of Mexico. During the proceedings the United States offered to submit a reply, to which Sir Edward Fry, one of the members of the Arbitral Court, objected on the ground that according to the terms of the Protocol, there had not been given that Nation the right to reply to Mexico's allegations. Upon the admission of the Agent for the United States that the objection was well founded, Sir Edward Fry said, referring to the Convention: "This is the code." (Report of the Agent of the United States in the Pious Funds case).

In the case of Rudloff (Venezuelan Arbitrations of 1903, pages 192-194; Morris report, page 431) the Umpire maintained that the Convention "is the fundamental law for this Commission and the sole source of its jurisdiction."

Also in the case of Van Bokkelen (Moore 1822), the Arbitrator said :

“ In a word, the Protocol, which must be the guide and standard of jurisdiction for the Referee, crystallizes and formulates the fundamental grounds of past discussion and controversy in a single, definite issue, and furnishes the rule of decision.”

In the claim of the French Company of the Venezuelan Railroad, Protocol of 1902 (Ralston Report, page 443), the Umpire said :

“ It would seem to the umpire that the question first occurring is one of jurisdiction ; in other words, of competency. For, however deeply the sympathies of the judge may be stirred in behalf of those who have bravely struggled and who have seriously suffered, nevertheless there is an imperative duty which is primary. That duty is to determine the limits which circumscribe him and keep himself within the prescribed and fixed bounds.

“ The limits of this Honorable Commission are found and found solely in the instrument which created it, the protocol of February 19, 1902. An Arbitral Tribunal is one of large and exclusive powers within its prescribed limits, but it is as impotent as a morning mist when it is outside these limits. A reference to the Convention which created this Commission will disclose its purpose and purview.”

The authority of the Arbitrator

“ is derived exclusively from the submission to arbitration, and every part of it as well as the documents referred to therein must be taken into consideration in order to determine the extent of such authority.

American and English Encyclopaedia of Law, p. 669 (Second Edition).

“ The Arbitrator cannot lawfully go beyond the terms of the submission in order to do general justice.”

Ibid., p. 672.

In the case of Stevenson, before the British-Venezuelan Commission, 1903 (Ralston Report, p. 451) the Umpire affirmed :

“ Inspection of the protocol of February 13, 1903, between Great Britain and Venezuela discloses in the preamble the occasion of arbitrating the existing differences and their scope or extent, as follows :

WHEREAS, certain differences have arisen between the United States of Venezuela and Great Britain in connection with the claims of British subjects against the Government of Venezuela.

“ Article III submits to arbitration certain of these claims of British subjects reserving some which have been dealt with in Article IV. Whence it follows that nothing having been submitted to this Tribunal, except the claims of British subjects, nothing else can be decided. An Arbitral Tribunal between Nations is a tribunal of great power within the terms of its creation, but absolutely powerless outside thereof. Nothing can be within its terms except that which has been decreed by the clear and express agreement of the High Contracting Parties. The Umpire does not find in the solemn covenant which created this Tribunal any authority which allows him to decide anything else than claims of British subjects, or, in other words and affirmatively, he does not find that he has authority to pass upon matters resting solely in unatoned indignities to the claimant Government.”

In the *Postal Treaty Case*, before the Italian-Venezuelan Commission (Venezuelan Arbitration of 1903, page 665) the Umpire says :

“ It is to be borne in mind that claimants presenting themselves before the Commission appear before a body of limited powers.”

I could easily increase the quotations by other weighty opinions from arbitrations both old and recent, which have become invariable juridical doctrine on the subject. It is a well known fact, and is held as a principle of international law, that the Protocol or

Arbitral Convention is the sole source of all power in the matter of arbitration, the rule or standard which should be followed by the arbitrator, and the law in which are found the powers beyond which the arbitrator is powerless. I believe, however, that the examples quoted suffice to show that, Your Honor's authority being derived exclusively from the Protocol or Arbitral Convention dated March 17, 1910, Your Honor's jurisdiction is limited to deciding the simple question :

What is the boundary between Panama and Costa Rica under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic made the 11th of September, 1900 ?

I will now take the liberty of adding a few quotations from authors of renown, bearing upon the effect of excess of the authority conferred upon an arbitrator, and also dealing with the force of the decisions which he pronounces and their final, irrevocable and obligatory character when in making them he has kept within the limits of said powers.

Vattel, in section 329, on "Arbitration," Book II, Chapter XVII, in the second volume of the work "Le Droit de Gens ou Principes de la Loi Naturelle," cites the cases when the parties have the right to refuse to submit to an arbitral award. The first of the cases mentioned is

"when the Tribunal makes an award in excess of the jurisdiction which has been conferred upon it."

and adds the following :

"In order to avoid all difficulty, to remove any pretext for bad faith, it becomes necessary to determine exactly in the agreement, the subject of the dispute, the respective opposite claims, the demands of the one and the opposition of the other. This is what is submitted to the Arbitrators, on which the promise is made to abide by their decision. Thus, they, if their award does not exceed these precise limits, it is necessary to submit to it."

Taylor says, in his work on "International Public Law" on page 379, that it is generally admitted that arbitral decisions or awards may be honorably disregarded when the Tribunal has exceeded the powers conferred upon it by the articles of submission; and Heffter in his "*Droit International d'Europe*" Birgson edition, page 210, makes a similar statement, viz: that the award or decision may be disregarded if it has been rendered beyond the stipulations of the Arbitral Convention.

According to A. Merignhac, Professor in the Law College of Toulouse, "arbitrators may exceed their powers in various ways, among others, by exceeding the limits of the powers conferred upon them." (*Traité Théorique et Pratique de l'Arbitrage International*, Book II, Chapter III. Causes de Nullité de l'Arbitrage International, Section II).

Also, Rivier, in Vol. II, page 185 of his "*Principes de Droit de Gens*," says that the State against which a decision has been rendered may have just reasons to refuse its execution, and that this occurs most frequently in cases in which the Arbitrator has exceeded his powers or has not conformed to the terms of the convention.

Pradier Foederé, Kamarowsky, Fiore and Oppenheim, all maintain the same principle of the subjection of the Arbitrator to the terms of the Arbitral Convention. This is the only way of insuring the validity or irrevocable character of an arbitral award, since a violation, by the Tribunal, of the Arbitral Convention, no matter in what way, is a fundamental ground of nullity. Such violation comprises cases in which the Tribunal decides questions which have not been submitted to it, or omits to decide those which were, or otherwise disregards the terms of the Convention, or the rules adopted for the decision of the controversy.

Calvo in his "*Droit International Théorique et Pratique*," page 1774, holds that parties who submit a question to arbitration are by this fact morally bound and obligated to comply with the award unless it has been rendered when the Arbitrators were not sufficiently empowered for that purpose or when they have decreed something beyond the terms of the Convention.

Blüntschi, likewise, in his "Treatise on Codified International Law", in the chapter on Arbitrations, Book VII, paragraph 500, maintains the same doctrine :

"Arbitration, he says, may deal with points of law or with points of fact. As a general rule the points which are to be decided are determined in advance, in order to prevent disagreements and difficulties ; and

"The award of the Arbitrators is void if it deals with points which are not within their jurisdiction."

Finally, the "American and English Encyclopaedia of Law" (Arbitration and Awards, Vol. 2, page 675 *et seq.*) expresses the following principles of general jurisprudence which are perfectly applicable to the case in hand :

"The power of the arbitrators, when not modified or defined by the statutes, is derived entirely from the submission, but every part of the submission, including papers or documents to which it refers, should be taken in consideration to determine their power." (Power of the Arbitrators, page 675).

"An arbitrator cannot legally exceed the powers conferred upon him by the submission. Any award given in excess of the authority so conferred upon him will be void."

"Only the questions that have been distinctly submitted must be considered by the Arbitrator, who cannot modify them nor extend to others, though they may be intimately related to the former." (Excess of Authority, page 676).

I have made the foregoing quotations, which I could reinforce with others from the decisions of the Supreme Court of the United States, and of some Arbitral Tribunals, only as a matter of procedure and to meet the demands that the Representative of Costa Rica might make upon this point, but not because I fear that Your Honor would deviate from the rule established in the Protocol or Arbitral Convention. I hold the highest opinion of Your Honor's judicial judgment, and feel certain that having the Loubet Award as the basis upon which your decision must rest, and having

to determine the boundary line between Panama and Costa Rica, in the words of the Protocol, under and most in accordance with the correct interpretation and true intention of the Loubet Award, Your Honor will establish the boundary line following the legal line as drawn in the Loubet Award, neither more nor less, as if Your Honor—to use a comparison—should draw a line over a sheet of paper following a tape or a wooden or rubber rule furnished for the purpose.

I do not think it necessary to enter into considerations regarding the interpretation of the Arbitral Convention. On this point I beg to refer to Sedgwick's opinion (Second Edition, page 191) that "it is not permissible to interpret that which does not need interpretation", an opinion with which all jurists are in accord. The Arbitral Convention by virtue of which Your Honor was appointed sole Arbitrator, and which defined your powers as such, is plain and clear, without ambiguities or deficiencies, and, taken as a whole, as it must be taken better to understand it, its conclusions are precise. Your Honor is the sole Arbitrator to decide upon the differences existing between Panama and Costa Rica; these differences were decided by a former arbitrator, and his award has been acknowledged and accepted as to the drawing of the legal boundary line; the same physical line has also been recognized up to a certain point, and there is no dispute or controversy except as relates to the rest of the physical line; to determine this line Your Honor has a foundation, that is, the legal line of the previous Award; Your Honor is to interpret that previous Award and discover its true intention, and thus the decision which Your Honor makes upon the subject, whatever it be, shall be held as a perfect and binding Treaty between the High Contracting Parties, and the line fixed shall be deemed final, conclusive and without appeal.

From the foregoing, then, and in view of the preceding history, supported by documents, of the Arbitral Convention of March 17, 1910, by which Your Honor is empowered to act as sole Arbitrator in the boundary question pending between Panama and

Costa Rica; and taking into consideration the analyzed terms of said Arbitral Convention, as well as the doctrine of jurists and authors relative to the force of Arbitral Awards, I may consider established, as indisputable points, the following :

I—That there is only one question which has been submitted to Your Honor for settlement, and that this question is to determine the boundary line between Panama and Costa Rica under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic of the 11th of September, 1900.

II—That this Award of the President of the French Republic has been solemnly recognized and accepted by Panama and Costa Rica in the Arbitral Convention signed at Washington by the Representatives of those countries on the 17th of March, 1919, by which Your Honor is empowered to act as Sole Arbitrator ;

III—That the Loubet Award having been solemnly accepted, the legal boundary between the two countries which that Award states is also accepted, and on this point Your Honor's task is materially easier, as it is in the construction of the boundary or physical line in the region of the Pacific from Punta Burica to a point beyond Cerro Pando on the Central Cordillera, near the ninth degree (9°) of north altitude ;

IV—That the only dispute being in reference to the physical line on the rest of the legal line, *i. e.*, on the side of the Atlantic from Point or Cape Mona, along all the spur which starts from this point or cape as far as the Central Cordillera and then by the Central Cordillera to the ninth degree (9°) of north latitude, as that legal line was fixed by the Award of the President of the French Republic,—Your Honor's Award must determine this disputed physical line, in accordance with the legal line of said Award.

V—That there would be an exceeding of authority or power, and Your Honor's decision would fail to be a perfect and binding treaty between the parties, but on the contrary would be void, and the boundary line fixed would not be held as final, conclusive and without appeal, should Your Honor disregard the Award and, instead of taking it as a basis for the physical drawing of this line as if it was a tape or rule for drawing a line on paper, adopt another method of procedure ;

VI—That the true intention of the Loubet Award, as it was expressed by the Representative of Costa Rica in his letter to Minister Delcassé, of September 29, 1900, was, indisputably, that of giving to both countries a natural boundary, following the summits of the Central Cordillera and those of the spur of that Cordillera which starts at Punta Mona and unites with said Central Cordillera ;

VII—That the interpretation of the legal line of the Loubet Award from Punta Mona and along the range or spur which, starting from that point, runs to the Central Cordillera is the simplest and most correct one, as well because it is continuous and offers no difficulties for the drawing of the physical line, as because it embraces a whole valley and does not cut it into sections in an irregular way ; and

VIII—That said legal line as fixed by the Loubet Award lies within the extreme limits of the Colombian claim, as they appear from Articles II and III of the Paris Convention of January 20, 1880, and the physical line which is to be drawn within said limits, in conformity with the note of Minister Delcassé, of November 23, 1900, will have only to follow that legal line in order to fulfill the above stated requirement.

It is now for Your Honor to decide. Your Honor's decision settling the question which has been submitted to your unbiased

and learned judgment, will put an end forever to the boundary dispute between two neighboring and sister neighbors, called, by Nature, to a common destiny. The decision thus made will carry the seal of that justice for which, within and without the United States, the decisions of the Supreme Court of the United States, the great American Republic, are distinguished and will increase the number of learned decisions daily quoted in the world, by diplomats, jurists and writers on International Law, because those decisions are the result of learning and the strictest justice.

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